
Costs Decision

Hearing held and site visit made on 25 April 2017

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 July 2017

Costs application in relation to Appeal Ref: APP/D0840/W/16/3164238 Land off Higher Trenant Road/ Green Hill, Wadebridge Cornwall

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Andrew Ware on behalf of Cerco Property Consultants Ltd. for Chaddlewood Investment Ltd. for a full award of costs against Cornwall Council.
 - The hearing was in connection with an appeal against a refusal to grant planning permission for 204 residential dwellings together with associated infrastructure including formal and informal landscaping and layout of internal access roads, details of access from Higher Trenant Road/ Green Hill to be determined with all other matters reserved.
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Decision

1. The application for an award of costs is refused.

The submission of the applicant

2. The costs application was made in writing at the hearing. The applicant's case for a full award of costs is chiefly in relation to procedural matters. However the applicant further makes the case that these procedural matters resulted in the Council's substantive failure to reach an appropriate judgement on the merits of the development proposed.
 3. Briefly summarised, the applicant explains that application Ref PA16/00721 was validated on 26 February 2016, comments from the Council's highways officer were not forthcoming until April 2016, and that a revised approach to mitigating the transport effects of the development was proposed on 10 June 2016. The mitigation proposed was a redesign of the roundabout junction of Bodieve Road, Gonvena Hill and St Matthews Hill (hereafter referred to simply as 'the junction'). The proposal was then considered, and refused, at Council committee on 30 June 2016.
 4. In this context the appellant contends that the Council devoted insufficient time to thoroughly considering the mitigation proposed, in conflict with the encouragement given in paragraph 187 of the National Planning Policy Framework (the 'Framework') that 'local planning authorities should look for
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solutions rather than problems'.¹ The appellant further contends that the Council introduced new reasons for refusal at appeal at paragraph 3.19 of the Council's Transport Technical Note, which necessitated further unwarranted expense.

The response by the Council

5. The Council's response was made in part in writing and in part verbally during the hearing. In summary they contend that their opposition to the proposal is based on appropriate reasoning, in essence as the mitigation proposed fails to provide an appropriate solution. The Council are furthermore of the view that their procedural approach at application and appeal stage was not unreasonable given, principally, what they contend is a lack of clarity as to the nature of the mitigation measures proposed by the appellant on 10 June 2016.

Reasons

6. Irrespective of the outcome of the appeal, the Planning Practice Guidance (the 'Guidance') sets out that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.² I accept, however, the appellant's position that actions at application stage may have a bearing at appeal and have considered such matters in so far as relevant.
7. In brief, application Ref PA16/00721, a proposal for 204 homes, was refused by the Council on the grounds that the transport effects of development would be unacceptable. Whilst I accept that some time elapsed between validation of the original application and highways officer's comments being made, the extent of delay here cannot in my view be said to amount to demonstrably unreasonable behaviour. That the highways effects of development were a matter of concern for the Council would have been known to the appellant in applying for permission; access to the highway network was identified in pre-application advice as potentially challenging.³
8. I also accept that a relatively short period of time elapsed between the appellant's submission of the junction redesign and the Council's decision on the proposal. However this does not in itself indicate the Council were dismissive of the mitigation proposed, indeed it is specifically referred to in the Council's officer report (addendum) to the committee meeting of 30 June 2016.
9. It is also ambiguous as to whether or not the junction redesign was intended to be part of the proposal at the time it emerged on 10 June 2016. The relevant correspondence reproduced in Appendix E of the appellant's Transport Statement sets out that 'such works [the junction redesign] would be abortive and divert funds from the longer term solution of a link road [between the A39 and Gonvena Hill]'.

¹ There are further references within the appellant's application for costs to correspondence between the Council and appellant dated 16 June 2017, and to their ostensible reluctance to consider the mitigation measures proposed.

² Reference ID: 16-028-20140306.

³ Ref PA14/00481/PREAPP.

10. Furthermore I identified in the appeal decision that the financial contribution proposed by the appellant in respect of 'highway works' is not explicitly, or exclusively, linked to the junction redesign. Instead such 'highway works' relate to relevant measures proposed in the Wadebridge Transport Strategy, dated November 2015, which include both junction remodelling and a link road.
11. Therefore in my view it cannot be said that the Council's actions in respect of taking account of the mitigation proposed prior to appeal can be deemed as unreasonable. I would also note that the encouragement given in the Framework that local planning authorities should look for solutions rather than problems does not extend to indicating that all proposals can be, or can through engagement be made, acceptable.
12. The ostensibly new reasons for refusal that the appellant claims were introduced by the Council at paragraph 3.19 of their Transport Technical Note relate to whether or not the junction redesign would be appropriate. As such they arose in the context of a revised proposal different from that originally submitted, i.e. including the mitigation, rather than being introduced inappropriately by the Council. As explained in the appeal decision, it is furthermore common ground between the parties that the mitigation has not been subject to a road safety audit which should have been undertaken prior to appeal.
13. Moreover the Council's appeal statement and associated transport studies give thorough consideration to the likely effects of development on the operation of the highway network, and to the benefits of the proposal relative to the harm that they consider would arise. On the basis of the information before me, including with regard to the proposed junction redesign, I have furthermore reached the same position as the Council regarding the overall acceptability of the development proposed.

Conclusion

14. For the above reasons, and having taken account of all other matters raised, I therefore conclude that unreasonable behaviour resulting in unnecessary expense has not been demonstrated. Accordingly, and with reference to the approach in the Guidance, an award of costs is not justified in this instance.

Thomas Bristow

INSPECTOR